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IN THE

Supreme Court of the United States

No. 437 [redacted]—October Term, 1962

EDWARD STOCK,

Appellant,

against

CHRISTOPHER F. TERRENCE, M. D., Director, Rochester State Hospital,

Appellee.

Proceeding No. 1.

EDWARD STOCK,

Appellant,

against

CHRISTOPHER F. TERRENCE, M. D., Director, Rochester State Hospital,

Appellee.

Proceeding No. 2.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Appellee in the above entitled case moves to dismiss the appeal herein or to affirm the order below on the ground that the appeal does not present a substantial federal question. Reported below: 11 N. Y. 2d 362 (1962).

Statement

By a petition dated June 9, 1959, signed by John Benny, M. D., Assistant Superintendent of the I. Meyer Memorial Hospital, Buffalo, New York, an application was made to the Erie County Court for an order certifying the relator to an institution for the mentally ill, for observation and treatment for a period not to exceed 60 days, pursuant to the provisions of New York Mental Hygiene Law, § 74.

Annexed to the petition was a medical certificate, signed by two examining physicians, who had diagnosed relator's mental condition as paranoid schizophrenia and who certified that his mental condition was such as to require care and treatment in an institution for the mentally ill.

On June 9, 1959, service of the application for an order committing relator to the Buffalo State Hospital, as a mentally ill person, *was personally made upon both the relator and his mother.*

On June 12, 1959, the Erie County Court (Burke, J.) signed an Order of Certification, directing that relator be admitted to the Buffalo State Hospital "for observation and treatment for a period not to exceed 60 days." The order further provided that upon the filing of the certificate referred to in subdivision 7 of § 74, prior to the expiration of 60 days, "this order shall then become final".

On July 28, 1959, prior to the expiration of 60 days, a certificate was filed by Dr. Henry H. Harnes, a duly designated medical officer of the Buffalo State Hospital, stating that relator was mentally ill and in need of continued care and treatment. Apparently, the relator did not receive notice of the filing of this certificate. On October 22, 1959, he was transferred from the Buffalo State Hospital to the Rochester State Hospital.

Proceeding No. 1

By a petition verified on May 31, 1961, relator applied to the Supreme Court, Monroe County, for a writ of *habeas corpus*, alleging that:

> "The imprisonment is illegal in that your petitioner is being held without a final order having been made or entered declaring him to be mentally ill and confining him for an indeterminate period of time and, therefore, the confinement of your petitioner beyond the sixty (60) day temporary period is illegal."

A writ of *habeas corpus* was allowed on May 31, 1961 by Hon. Daniel J. Macher, Justice of the Supreme Court, returnable on June 8, 1961. A hearing was had upon the return day and, in a memorandum decision dated July 12, 1961, the Court (Brisco, J.) held that relator had failed to show that his imprisonment was illegal and that the writ should be dismissed. An order to that effect was signed on September 26, 1961 and entered in the Monroe County Clerk's office on September 27, 1961.

Proceeding No. 2

By a petition verified July 17, 1961, relator again applied for a writ of *habeas corpus*, contending that his confinement beyond the original 60-day "temporary period" was illegal because (1) he was being held "without a final order having been made or entered declaring him to be mentally ill and confining him for an indeterminate period of time * * *"; and (2) if such a final order was in effect, his Federal and State constitutional rights were violated because he had "not been given notice thereof, nor an opportunity to have a hearing or a jury trial on the matter * * *."

A writ of *habeas corpus* was allowed on July 17, 1961 by Hon. Clarence J. Henry, Justice of the Supreme Court,

returnable on July 26, 1961. A hearing was had upon the writ and, in a memorandum decision dated September 8, 1961, the Court (GABRIELLI, J.) held that relator's confinement was valid. An order dismissing the writ was entered in the Monroe County Clerk's office on September 26, 1961. By two separate orders both entered on March 29, 1962, the Appellate Division, Fourth Judicial Department, unanimously affirmed (15 A. D. 2d 992 [1962]).

The New York Court of Appeals, treating both petitions as if they were one pleading, unanimously affirmed the Appellate Division, with opinion (*per* DESMOND, C. J.), 11 N. Y. 2d 362. In rejecting the claim of unconstitutionality, the New York Court stated (p. 365):

> "* * * relator did not sue out these writs to get a discharge on the ground that he is not mentally ill, a procedure which is always open to him, in addition to the remedies set up by the Mental Hygiene Law (see *Matter of Coates*, 9 N. Y. 2d 242, 247, app. dism.: 668 U. S. 34)."

The Court pointed out (p. 365):

> "Unlike petitioner Coates in the proceeding just cited, relator is not availing himself of the right given by section 76 of the Mental Hygiene Law * * * Relator takes his stand on the single fact that he received no notice of the medical officer's July 28, 1959 certification as a result of which his temporary status became permanent or 'final'. He asserts that the lack of such notice for nearly three years has in actual effect and in theory of law deprived him of his right to the review of the proceedings under which he was committed and pursuant to which he is still being restrained of his liberty. We, however, agree with the court below. Relator has shown no violation of any right under the Federal or State Constitutions or under the Mental Hygiene Law as interpreted by us in *Matter of Coates* (9 N. Y. 2d 242, *supra*)."

The Court held that the appellant's 30-day limitation period for demanding a review of his commitment had not begun to run and it noted that, *unlike* the appellant in the *Coates* case, *supra*, he had received notice of the original application for commitment (p. 366):

> "Consistently with the *Coates* decision, we hold that the absence of notice to the relator of the July 28, 1959 Medical Director's certification kept alive relator's right to a section 76 review. But we hold, too, that absence of such notice had no effect on the validity, already established by the County Court order, of relator's continued detention after and by reason of the Medical Director's official certificate. The notice given to relator and to his mother of the original (June 12, 1959) application to the County Court was warning enough, constitutionally and under the statute, not only of the impending temporary commitment but that the temporary terms of the order would become final if and when the Medical Director should file a certificate that continued care and treatment were essential."

ARGUMENT

In view of this Court's decision in *Coates* v. *Walters*, 368 U. S. 34, the appeal herein presents no substantial federal question and should be dismissed, or the order sought to be reviewed should be affirmed.

Mental Hygiene Law, § 74, relates to the admission of a person alleged to be mentally ill to a State institution on court certification. Subdivision 1 provides for the certification to, and confinement in a mental institution of a person alleged to be mentally ill, upon an order made by a court of record, upon a certificate made by two examining physicians, accompanied by a petition therefor, and after a hearing as provided in § 74.

The persons who may so petition are set forth in subdivision 2 of § 74. Under subdivision 3, notice of the application is to be served personally on the alleged incompetent, except that such notice may be dispensed with by the Judge to whom the application is made, if he is satisfied from any statement contained in the papers in the proceedings that personal service would be ineffective, or would be detrimental to such person.

Provision is also made that when the petition is made by a person other than close relatives, notice must be served upon certain designated persons. A hearing upon the petition may be demanded on behalf of the alleged mentally ill person, or the Judge may upon his own motion direct that a hearing be held. Where no application is made for a hearing, the Judge may, if satisfied that the alleged mentally ill person may require mental care and treatment, issue an order directing that such person be admitted to a mental institution for a period not exceeding 60 days for the purpose of observation and treatment (§ 74, subd. 4).

Subdivision 6 of § 74 provides for the filing in the proper county clerk's office of the papers in the proceeding.

Subdivision 7 of § 74 provides for the certificate of the medical officer of the institution to which an alleged mentally ill person is committed. At any time prior to the expiration of 60 days from the date of the commitment order, a certificate may be filed to the effect that the patient is in need of continued care and treatment. Upon the filing of that certificate in the county clerk's office, the order of commitment becomes final.

Authority is given to the director of the institution or physician in charge to "refuse to receive any person . . .

if in his judgment, such person is not mentally ill . . . or if received, such person may be discharged" (Mental Hygiene Law, § 74[8]).

Mental Hygiene Law, § 76, provides, among other things, that if the person certified to the institution, or any relative or friend in his behalf is dissatisfied with the final order certifying him, he may, within 30 days after the making of that order, obtain a hearing and review of the proceedings already had upon a petition to a Justice of the Supreme Court, who shall cause a jury to be summoned to try the question of the mental illness of the person so certified. Appellant has never availed himself of this remedy.

The appellant here, unlike the appellant in the *Coates* case, *supra*, was *personally* served with a copy of the petition for his original commitment. Thus he (and his mother) were put on notice that a certificate must be filed to detain him after 60 days of confinement. Moreover, unlike the appellant in the *Coates* case, *supra*, this appellant has never asserted that he is sane and has never availed himself of the right to a review provided in Mental Hygiene Law, § 76.

Additionally, it should be noted that in addition to the procedures found in § 74 of the Mental Hygiene Law, which insure that a mentally ill person will not be deprived of his constitutional right to "due process", other safeguards protect him so that he may not be illegally confined. In the event that the patient or any relative or friend in his behalf fails to avail himself of the right of review as so provided (Mental Hygiene Law, § 76) within 30 days after the order of certification becomes final, the Legislature, by Mental Hygiene Law, § 204, and Civil Practice Act, Article 77, has specifically guaranteed by a writ of

habeas corpus a safeguard against improper detention of a mentally ill person. This remedy is available even within the 60-day period of detention and is also afforded to a relative or friend in behalf of the incompetent (*Matter of Gurland v. Beckenstein*, 286 App. Div. 704 [2d Dept., 1955], app. dism. 309 N. Y. 969). Contrary to the general rule as to such proceedings, the basic fact of the mental condition of the relator must be inquired into and determined in proceedings under an application for a writ of *habeas corpus*.

Thus, relator has had the right to commence a § 76 review from June 28, 1959 to date and this right has not yet terminated. He has had, in addition, the right to litigate the question of his sanity in a *habeas corpus* proceeding from the date of his commitment, June 12, 1959.

We submit that since the relator has failed to avail himself of his right to a review of his commitment pursuant to § 76 of the Mental Hygiene Law, his contentions with respect thereto are wholly academic and were improperly presented in a *habeas corpus* application. We further submit that since relator failed to raise the issue of his mental condition in the *habeas corpus* petition, pursuant to the provisions of Mental Hygiene Law, § 204, that petition was properly dismissed.

Thus, it is clear that due process is provided to persons in the appellant's situation, so that no substantial federal question is presented. His contention to the contrary has been adequately answered by this Court in a situation even more favorable to the appellant, when it dismissed the appeal in the *Coates* case, 368 U. S. 34.

CONCLUSION

The appeal herein should be dismissed for lack of a substantial federal question or the order sought to be reviewed should be affirmed.

Dated: November 2, 1962.

Respectfully submitted,

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